

HOUSE BILL NO. 47

INTRODUCED BY W. PRICE

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING STATE INVESTMENTS; REMOVING THE REQUIREMENT THAT STATE BANK EXAMINERS EXAMINE LOANS AND INVESTMENTS; ~~PROVIDING FOR THE USE OF EARNINGS ON THE INVESTMENT OF THE COAL SEVERANCE TAX PERMANENT TRUST FUND TO OFFSET INVESTMENT LOSSES;~~ ELIMINATING INCREASING THE MAXIMUM LOAN FOR IN-STATE INVESTMENTS; REQUIRING COMMERCIAL LENDER PARTICIPATION FOR CERTAIN INVESTMENTS; ELIMINATING RESTRICTIONS ON MAXIMUM LOAN SIZES FOR PURPOSES OF JOB CREDIT INTEREST RATE REDUCTIONS; AMENDING SECTIONS 17-5-1529, ~~17-6-308,~~ 17-6-311, 17-6-312, 17-6-318, AND 17-6-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 17-5-1529, MCA, is amended to read:

"17-5-1529. Annual audits. ~~(1) At least once each year, the bank examiners of the department shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds.~~

~~(2)~~ The board's books and records related to economic development bonds must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit ~~shall~~ must be paid from the board's funds."

~~**Section 2.** Section 17-6-308, MCA, is amended to read:~~

~~**"17-6-308. Authorized investments.** (1) Except as provided in subsections (2) through (4) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.~~

~~(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The~~

~~board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.~~

~~——— (3) The board shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The board shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. Until the department makes a loan pursuant to the provisions of part 5 of this chapter, the \$915,000 in funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans made pursuant to part 5 of this chapter are repaid, the board shall deposit the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest.~~

~~——— (4) The board shall allow the Montana health facility authority to administer \$15 million of the permanent coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90, chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan amounts may not exceed 10% of the amount administered under this subsection.~~

~~——— (5) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for-profit corporations.~~

~~——— (6) All repayments of proceeds pursuant to subsection (3) of investments made from the coal severance tax trust fund must be deposited in the coal severance tax permanent fund.~~

~~———— (7) The board may use income generated by the permanent coal tax trust fund to offset any losses of trust principal that occur as a result of a loan default or an investment."~~

Section 2. Section 17-6-311, MCA, is amended to read:

"17-6-311. Limitation on size of investments. ~~(1) Except as provided in subsections (2) through (4), an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 1% of the permanent coal tax trust fund. This subsection does not apply to a loan made pursuant to 17-6-317.~~

~~———— (2) Subsection (1) does not limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2).~~

~~———— (3) Subsection (1) does not apply to the purchase of debentures issued by a capital company. However, the total amount of debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase.~~

~~———— (4) (1) EXCEPT AS PROVIDED IN SUBSECTION (2) AND THIS SUBSECTION, AN INVESTMENT MAY NOT BE MADE THAT WILL RESULT IN ANY ONE BUSINESS ENTERPRISE OR PERSON RECEIVING A BENEFIT FROM OR INCURRING A DEBT TO THE PERMANENT COAL TAX TRUST FUND THE TOTAL CURRENT ACCUMULATED AMOUNT OF WHICH EXCEEDS 10% OF THE PERMANENT COAL TAX TRUST FUND. IF AN INVESTMENT RESULTS IN ANY ONE BUSINESS ENTERPRISE OR PERSON INCURRING A DEBT IN EXCESS OF 6% OF THE PERMANENT COAL TAX TRUST FUND, AT LEAST 30% OF THE DEBT INCURRED FOR THE PROJECT OR ENTERPRISE FOR THE COAL TAX INVESTMENT THAT WAS MADE TO THE BUSINESS ENTERPRISE OR PERSON MUST BE HELD BY A COMMERCIAL LENDER. THIS SUBSECTION DOES NOT:~~

~~(A) APPLY TO A LOAN MADE PURSUANT TO 17-6-317;~~

~~(B) LIMIT THE BOARD'S AUTHORITY TO MAKE LOANS TO THE CAPITAL RESERVE ACCOUNT AS PROVIDED IN 17-6-308(2);~~

~~(C) APPLY TO THE PURCHASE OF DEBENTURES ISSUED BY A CAPITAL COMPANY. HOWEVER, THE TOTAL AMOUNT OF DEBENTURES PURCHASED BY THE BOARD MAY NOT EXCEED 1% OF THE MONTANA PERMANENT COAL TAX TRUST FUND AT THE TIME OF PURCHASE.~~

(2) The total amount of loans made pursuant to 17-6-309(2) or 17-6-317 may not exceed \$50 million, and a single loan may not be less than \$250,000. Except for a loan made pursuant to 17-6-317, a loan may not exceed \$16,666 for each job that is estimated to be created. In determining the size of a

1 loan made pursuant to 17-6-309(2), the board shall consider:

2 ~~(a)(1)(A)~~ the estimated number of jobs to be created by the project within a 4-year period from
3 the time that the loan is made and the impact of the jobs on the state and the community where the
4 project will be located;

5 ~~(b)(2)(B)~~ the long-term effect of corporate and personal income taxes estimated to be paid by the
6 business and its employees;

7 ~~(c)(3)(C)~~ the current and projected ability of the community to provide necessary infrastructure
8 for economic and community development purposes;

9 ~~(d)(4)(D)~~ the amount of increased salaries, wages, and business incomes of existing jobholders and
10 businesses; and

11 ~~(e)(5)(E)~~ other matters that the board considers necessary."
12

13 **Section 3.** Section 17-6-312, MCA, is amended to read:

14 **"17-6-312. State participation in loans.** (1) Subject to 17-6-311~~(4)~~, state participation in any loan
15 to a business enterprise, except for a loan made pursuant to 17-6-317 or guaranteed by a federal agency,
16 must be limited to 80% of the outstanding loan. The state shall participate in the security for a loan in the
17 same proportion as the loan participation amount.

18 (2) The purchase of debentures issued by a capital company is not a loan participation and is not
19 subject to subsection (1).

20 (3) State participation in loans to nonprofit corporations may qualify for the job credit interest rate
21 reductions under 17-6-318 if the interest rate reduction passes through to a for-profit business creating
22 the jobs."
23

24 **Section 4.** Section 17-6-318, MCA, is amended to read:

25 **"17-6-318. Job credit interest rate reduction for business loan ~~participations~~ participation.** (1) A
26 borrower who uses the proceeds of a business loan participation funded under the provisions of this part
27 to create jobs employing Montana residents is entitled to a job credit interest rate reduction for each job
28 created ~~over a 2-year period~~ to employ a Montana resident. A borrower who ~~used~~ uses the proceeds of
29 a loan made pursuant to 17-6-309(2) to create jobs is entitled to a job credit interest rate reduction for
30 each job created ~~in the 4-year period provided for in 17-6-311(4)(a). The date of the formal written interim~~

~~or permanent loan application to the financial institution will be used as a beginning date for counting the number of jobs created. The job credit interest rate reduction may not apply to a loan participation of more than 1% of the total of the permanent coal tax trust fund determined at the end of the last completed fiscal year. The job credit interest rate reduction is equal to 0.05% for each job created to employ a Montana resident, up to a maximum interest rate reduction of 2.5%.~~

(2) If the salary or wage of the job created:

(a) exceeds the average weekly wage, as defined in 39-71-116, the amount of the job credit interest rate reduction may be increased proportionately for each increment of 25% above the average weekly wage to a maximum of two times the average weekly wage; or

(b) is less than the average weekly wage, as defined in 39-71-116, the job credit interest rate reduction is reduced proportionately for each 25% increment below the average wage.

(3) A job credit interest rate reduction may not be allowed for a job created by the borrower using the proceeds of the loan for which the salary or wage is less than the minimum wage provided for in 39-3-409.

(4) A job credit may not be given unless one whole job is created.

(5) To qualify for the job credit interest rate reduction, the borrower shall provide satisfactory evidence of the creation of jobs and shall make a written application in writing, to the board through its financial institution or, in the case of a loan made pursuant to 17-6-309(2), shall make a written application directly to the board when the loan is delivered to the board or not later than 45 days after the applicable anniversary dates of the loan."

Section 5. Section 17-6-321, MCA, is amended to read:

"17-6-321. Audits. ~~(1) At least once each year, the bank examiners of the department shall examine loans and investments of the board. The actual cost of this examination must be paid from the board's funds.~~

~~———(2) The board's books and records related to in-state investments must be audited once each fiscal year by or at the direction of the legislative auditor. The actual cost of this audit must be paid from the board's funds."~~

NEW SECTION. **Section 6. Effective date.** [This act] is effective ~~July 1, 2001~~ UPON PASSAGE AND

1 APPROVAL.

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